



PUBLIC NOTICE

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DA 03-421
Released: February 11, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF BIRCH TELECOM, INC. TO IONEX TELECOMMUNICATIONS, INC.

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-39

On February 4, 2003, Ionex Telecommunications, Inc. ("Ionex") and Birch Telecom, Inc. ("Birch") and its shareholders (collectively, the "Applicants"), filed an application, pursuant to section 63.04 of the Commission's rules,¹ for consent to the transfer of control of Birch, and its operating subsidiaries holding blanket section 214 authorizations to provide domestic telecommunications service, from the existing shareholders of Birch to Ionex.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because (1) the proposed transaction will result in Ionex having a market share in the interstate, interexchange market of less than 10 percent; (2) Ionex will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant LEC that is not a party to the transaction; and (3) neither Birch nor Ionex is dominant with respect to any service.

In addition to holding their respective section 214 authorizations to provide domestic interstate telecommunications service, Birch's operating subsidiaries collectively are authorized to provide, and currently provide, intrastate telecommunications services in the following states: Texas, Illinois, Indiana, Michigan, Ohio, Wisconsin, Kansas, Missouri, Oklahoma, Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Through its operating subsidiaries, Birch provides bundled local and long distance services, calling card services, toll free numbers, dial-up Internet access (using ISDN, DSL, T1 and/or other high-speed facilities), Web hosting, integrated voice and data transmission services, and telephone equipment sales and services, primarily to small and medium-sized business

¹ 41 C.F.R. § 63.04; *see* 47 U.S.C. § 214

² Applicants are also filing an application to transfer control of Birch and its operating subsidiaries holding section 214 authorizations to provide international telecommunications services. Any action on this domestic application is without prejudice to Commission action on other related pending applications.

customers located in the Midwest and Southeastern United States. Birch currently has 371,000 lines in service. Through its subsidiaries, Ionex currently provides facilities-based telecommunications services, including local and long distance telephone service, enhanced voice services and high-speed data services, to more than 60,00 small and medium-sized business customers, located primarily in Texas, Oklahoma, Kansas, Missouri, Minnesota, South Dakota, Colorado, and Iowa.

The proposed transfer of control will be effected by the merger of Birch with a special purpose subsidiary of Ionex, whereby Birch will be the surviving entity and will become a wholly owned, direct subsidiary of Ionex. Birch will continue to own and control each of its existing subsidiaries. Ionex will issue new shares of its own stock to the diffuse group of current shareholders of Birch, *pro rata*, so that they will hold approximately 18 to 26.4 percent of the total outstanding stock of Ionex; however, none of those shareholders individually will hold a 10 percent or greater equity interest in Ionex. An integral part of the transaction is a multimillion dollar additional investment by the current shareholders of Ionex.

Applicants state that the proposed transaction is in the public interest because it will allow Birch and Ionex to take advantage of greater economies of scale and Birch will have access to additional capital from a well-financed parent, Ionex.³ Applicants contend that the proposed transaction will thus allow them to continue to provide customers the benefits of competition. Specifically, Applicants state that the proposed transaction will facilitate the ability of Birch and Ionex, through their operating subsidiaries, to compete more effectively against the incumbent telecommunications carriers in their service areas, and thereby will enhance long term consumer choice throughout the United States. Applicants state that they will benefit from the significant inflow of capital that will result from the transaction, and Birch's management team will add a depth of experience to Ionex's current operations, which, post-transaction, will further facilitate the success of both Birch and Ionex. Finally, Applicants state that Birch will continue to serve its present customers and the transaction will be transparent to them.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁴ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the

³ Birch has recently completed a Chapter 11 bankruptcy reorganization.

⁴ See 47 C.F.R. § 63.03(a).

domestic lines or authorization to operate on the 31st day after the date of this notice.⁵ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **All** hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All** filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

(1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.

(2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and

⁵ Such authorization is conditioned **upon** receipt of any other necessary approvals from **the** Commission in connection with the proposed transaction.

- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and
- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: nioshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC. 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

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